

WILLIAM BLUMENTHAL
General Counsel
MICHAEL P. MORA
Federal Trade Commission
600 Pennsylvania Ave. NW, Room NJ-2121
Washington, DC 20580
Telephone: (202) 326-3373
Facsimile: (202) 326-3258
Email: mmora@ftc.gov

COUNSEL FOR FEDERAL TRADE COMMISSION

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

In re: THE BILLING RESOURCE d/b/a
INTEGRETEL, a California
Corporation,

Tax ID: 33-0289863

Case No. 07-052890

Chapter 11

THE BILLING RESOURCE, d/b/a
INTEGRETEL, a California corporation,

Plaintiff,

v.

FEDERAL TRADE COMMISSION, et al.

Defendants.

Adv. Proc. No. 07-05156

**DECLARATION OF
LAURA KIM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
A TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

DECLARATION OF LAURA KIM
IN OPPOSITION TO PLAINTIFF'S MOTION
FOR A TRO AND PRELIMINARY INJUNCTION

1 I, Laura Kim, pursuant to 28 U.S.C. § 1746, declare as follows:

2 1. I am an attorney employed by the Federal Trade Commission (“FTC” or “Commission”)
3 in its Bureau of Consumer Protection, Division of Marketing Practices. My work address
4 is: Federal Trade Commission, 600 Pennsylvania Ave., NW, Room H-288, Washington,
5 DC 20580. Unless otherwise indicated, I have personal knowledge of the facts stated in
6 this Declaration and if called as a witness, could competently testify thereto.

7 2. I submit this Declaration in opposition to the Motion for a Temporary Restraining Order
8 recently filed by The Billing Resource d/b/a Integretel (“Integretel”) in the above-
9 captioned adversarial proceeding.

10 3. I am the lead attorney representing the Commission in a civil action captioned *Federal*
11 *Trade Commission v. Nationwide Connections, Inc., et al.*, No. 06-Civ-80180-Ryskamp-
12 Vitunac (the “Enforcement Action”), currently pending in the United States District Court
13 for the Southern District of Florida. Integretel is a defendant in the Enforcement Action.

14 4. The Commission commenced the Enforcement Action on February 27, 2006, pursuant to
15 Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), against five individuals and the
16 corporations they controlled (collectively, the “Nationwide Defendants”), for violations
17 of Section 5 of the FTC Act, 15 U.S.C. § 45(a) (prohibiting unfair or deceptive practices
18 in or affecting commerce). The same day that the Commission filed suit against the
19 Nationwide Defendants, the Commission submitted to the court volumes of evidence
20 demonstrating that these Defendants had defrauded consumers from throughout the
21 country of more than \$30 million dollars by “cramming” bogus collect call charges onto
22 consumers’ telephone bills. At the request of the Commission, the District Court entered
23
24
25
26
27
28

1 an *ex parte* temporary restraining order (“TRO”) that shut down the Nationwide
2 Defendants’ unlawful operation, froze their personal and corporate assets, appointed
3 David R. Chase, of David R. Chase, P.A., as a temporary receiver (“Receiver”) for the
4 corporate defendants, and granted the Receiver and the Commission immediate access to
5 the Nationwide Defendants’ business premises.
6

7 5. The TRO created a federal equity receivership estate as of the date of its entry that
8 encompassed all of the assets of the corporate defendants, including Defendants Access
9 One Communications, Inc. (“Access One”), and Network One Services, Inc. (“Network
10 One”). The TRO required all entities holding assets of any defendant, including the
11 receivership defendants, upon being served with the TRO, to submit promptly to the
12 Commission a sworn statement accounting for any such assets. The TRO also included a
13 turnover order, requiring any entity served with the TRO to immediately transfer to the
14 Receiver all assets of the receivership defendants in its possession. The District Court
15 subsequently issued on March 8, 2006, a preliminary injunction that made the
16 receivership permanent but otherwise continued the substantive provisions of the TRO.¹
17
18 A true and correct copy of the TRO is attached hereto as **Kim Attachment A**.
19
20 6. The FTC served the TRO on Integretel within days of its entry. In response to the TRO,
21 Kenneth Dawson, the president of Integretel, submitted an unsworn statement to the
22 Commission alleging that “no amounts are currently due and owing” Defendants Access
23 One and Network One, companies for which Integretel crammed unauthorized charges
24

25
26

¹ The District Court also entered an Amended Preliminary Injunction on September 25,
27 2006 after a contempt hearing involving two of the individual defendants Willoughby Farr and
28 Mary Lou Farr. For purposes of this Declaration, I will refer to the Amended Preliminary
Injunction and the Preliminary Injunction as the “Preliminary Injunction.”

1 onto consumers' phone bills. A true and correct copy of Mr. Dawson's letter is attached
2 hereto as **Kim Attachment B.**

3 7. Evidence uncovered subsequent to the entry of the TRO revealed that the Nationwide
4 Defendants were not acting alone in carrying out their fraud. The FTC discovered
5 evidence demonstrating that four different billing aggregators, including Integretel,
6 played a central role in this billing scam by, among other things, processing the
7 unauthorized charges that the aggregators passed along to consumers' local phone
8 companies for placement on the consumers' telephone bills; but for Integretel's active
9 involvement in the Nationwide Defendants' scam, consumers would not have been
10 victimized to the extent that they were.

11 8. As a result, the Commission filed an Amended Complaint, which was docketed on
12 September 21, 2006, that added Integretel and the three other billing aggregators as
13 defendants. As in its original Complaint, the Commission's Amended Complaint alleged
14 the same two causes of action against all of the defendants: (1) a count for deceptive
15 billing practices in violation of Section 5(a) of the FTC Act; and (2) a count for unfair
16 billing practices in violation of Section 5(a) of the FTC Act. Through its Enforcement
17 Action, the Commission seeks *only* equitable relief, including an injunction halting the
18 defendants' unlawful practices, rescission of contracts, disgorgement of ill-gotten gains,
19 and restitution for consumer victims. A true and correct copy of the Commission's
20 Amended Complaint is attached hereto as **Kim Attachment C.**

21 9. On October 11, 2006, the Receiver learned that Integretel, in violation of the TRO and
22 Preliminary Injunction, had been holding reserve funds ("Reserve Funds") belonging to
23

1 Defendants Access One and Network One, and that were therefore funds constituting
2 property of the Receivership Estate. On October 16, 2006, the Receiver filed a Motion
3 for an Order to Show Cause Why Integretel Should Not Be Held in Contempt (“Contempt
4 Motion” or “Contempt Proceeding”). A true and correct copy of the Receiver’s motion is
5 attached hereto as **Kim Attachment D**.

6
7 10. After extensive briefing by all concerned parties, including the FTC, a hearing was held
8 on the Contempt Motion on April 12, 2007. On September 14, 2007, the District Court
9 entered an Omnibus Order granting the Contempt Motion and ordering Integretel to show
10 cause within 10 days why it should not be held in contempt for failing to turn over the
11 Reserve Funds as required by the TRO and the Preliminary Injunction. The District
12 Court also ordered Integretel to provide a sworn statement identifying the amount of
13 Reserve Funds as of the issuance of the TRO. The District Court further ordered that the
14 Reserve Funds be placed in a segregated Receivership account. A true and correct copy
15 of the District Court’s Omnibus Order is attached hereto as **Kim Attachment E**.
16
17

18 11. On September 16, 2007, Integretel filed a petition for relief in this Court pursuant to
19 Chapter 11 of the Bankruptcy Code.
20
21

22 12. On September 21, 2007, the District Court entered an order granting an emergency
23 motion filed by the FTC that requested clarification that the Bankruptcy Code’s automatic
24 stay provision did not apply to the FTC’s Enforcement Action or to the Contempt
25 Proceeding. A true and correct copy of the District Court’s Clarification Order is
26 attached hereto as **Kim Attachment F**. In the Clarification Order, the District Court
27 noted that in its Omnibus Order, it had ruled that the Reserve Funds are property of the
28

1 Receivership Estate and that the District Court had ordered Integretel to pay the current
2 Reserve Funds, amounting to \$1,762,762.56, to the Federal Receiver. The District Court
3 held that pursuant to the regulatory exception to the automatic stay, 11 U.S.C. §
4 362(b)(4), and the court's inherent civil contempt powers, Integretel's bankruptcy filing
5 did not stay either the Contempt Proceeding against Integretel, including the enforcement
6 of the turnover order, or the FTC's prosecution of its Enforcement Action against
7 Integretel.

8

9 13. On September 24, 2007, Integretel filed a notice of appeal to the U.S. Court of Appeals
10 for the Eleventh Circuit, seeking to appeal both the Omnibus Order and the Clarification
11 Order. Integretel moved for a stay of the two Orders pending appeal, and the District
12 Court conditionally granted Integretel's motion in an Order dated September 26, 2006.
13 The Order conditioned any stay upon Integretel's transferring the \$1.7 million in Reserve
14 Funds to the Receiver by Monday, October 1, 2007. A true and correct copy of the Order
15 conditionally granting Integretel's motion for a stay is attached hereto as **Kim**
16
17 **Attachment G.**

18

19 14(a). Since its commencement in February 2006, the Enforcement Action has grown
20 significantly larger in scope. As indicated above, the Commission originally filed suit
21 against the five individual defendants and their three corporate alter egos. In September
22 2006 Integretel and the three other billing aggregators were added as defendants, and in
23 June 2007, the aggregators impleaded four more individual third-party defendants. As it
24 now stands, there are seventeen parties to the Enforcement Action, not counting the
25 Receiver.

1 14(b). The parties to the Enforcement Action are currently in the late stages of discovery. To
2 date, more than thirty depositions have taken place. The District Court's Amended
3 Scheduling Order governing discovery, a true and correct of which is attached hereto as
4 **Kim Exhibit H**, provides that all discovery must be completed by Friday, October 5,
5 2007.² Depositions are scheduled for every business day until that date, in some cases
6 more than one per day in opposite ends of the country. Indeed, on the date currently
7 scheduled for the hearing on Integretel's motion for a TRO in the bankruptcy court, I will
8 be in Texas conducting the Rule 30(b)(6) deposition of one of the other aggregator
9 defendants while my co-counsel Collot Guerard will be in Florida participating in the
10 deposition of one of the third-party defendants. The parties' motions for summary
11 judgment are due on November 6, 2007, and trial has been specially set for February 25,
12 2008.³

15. It is critical that the FTC not be hampered at this late date in its pursuit of the
16 Enforcement Action notwithstanding the filing of Integretel's bankruptcy petition. All of
17 the parties to the Enforcement Action have faced significant challenges in trying to
18 accommodate the schedules of multiple parties, counsel, and witnesses over the course of
19 discovery, and to shut down discovery in its final days would impose a significant
20 hardship on the FTC and no doubt on others as well — including one witness who has yet
21
22

24 ² Pursuant to an earlier scheduling order entered December 11, 2006, discovery was to be
25 completed by July 13, 2007. Following the addition of four third-party defendants in June 2007,
however, the parties filed a joint motion to extend discovery to October 5, 2007.

26 ³ While the Amended Scheduling Order fixed the trial date at February 19, 2008, the
27 District Court subsequently issued a notice to the parties that the trial will commence on
February 25, 2008.

1 to be deposed and who has terminal cancer, and another whose minor son just underwent
2 a bone marrow transplant.

3 16. Any delay in the FTC's pursuit of the Enforcement Action will also adversely affect
4 consumers. A stay will mean that consumer victims must wait even longer for redress,
5 and it means that the FTC and consumers will have to wait even longer to obtain a
6 permanent injunction that would enjoin Integretel and the aggregator defendants from
7 further unauthorized billing. Moreover, any delay will impede the Commission's ability
8 to provide such redress because with each passing day, more victims move or change
9 telephone numbers.

10 17. The hardship on Integretel is likely to be minimal in the absence of a stay. As explained
11 above, discovery closes at the end of this week.⁴ Integretel has already responded to all of
12 the FTC's requests for production, requests for admission, and interrogatories.
13 Depositions of Integretel and its employees, including its president Ken Dawson, have
14 already been conducted. Almost all of the remaining depositions were either noticed by
15 the other aggregator defendants or the FTC, and Integretel has indicated that it has been
16 able to coordinate discovery with the other aggregator defendants to let them take the lead
17 at many of the remaining depositions. Thus, Integretel's remaining discovery obligations
18 and expenditures should be minimal.

19 22. 18. Counsel for Integretel in the Enforcement Action is Tighe Patton Armstrong Teasdale,
20 PLLC, a Washington, DC, law firm. Attorneys from this firm have participated in

21
22
23
24
25
26
27
28 ⁴ Despite having had ten months to complete discovery, the other three aggregator
defendants — Billing Concepts, Inc., ACI Billing Services, Inc., BSG Clearing Solutions North
America, LLC — filed a motion on September 28, 2007, to extend discovery in the Enforcement
Action until October 26, 2007. The FTC will oppose the motion.

1 depositions on behalf of Integretel after the filing of Integretel's bankruptcy petition. At
2 those depositions, counsel for Integretel indicated they were participating notwithstanding
3 the petition, and that Integretel did not oppose the taking of the depositions. At no point
4 did counsel state that Integretel would be prejudiced by the taking of any depositions.
5

6 Attached hereto as **Kim Attachment I** is an excerpt of one such deposition — the
7 deposition of June Burgess.

8 19. The Enforcement Action is not the first time that the FTC has filed suit against Integretel
9 for violations of the FTC Act. In 2000, the FTC sued Integretel for billing consumers for
10 services that the consumers did not authorize. *See FTC v. Verity Int'l, Ltd., et al.*, Civ.
11 No. 00-7422 (LAK) (S.D.N.Y.). That litigation settled as to Integretel in November 2002.

12 See "Companies That Billed Consumers for Adult 'Videotext' Internet Services Settle
13 FTC Charges," available at <http://www.ftc.gov/opa/2002/11/integretel.shtm>.

14 20. Integretel has also billed for other dishonest vendors sued by the FTC. For example,
15 Integretel processed charges for the defendants in *FTC v. Access Resource Services, Inc.*,
16 No. 02-60226 (S.D. Fla.) (Complaint filed Feb. 13, 2002); *FTC v. Cyberspace.com, LLC*,
17 No. C00-1806L (W.D. Wash.) (Complaint filed Oct. 20, 2000); and *FTC v. YP.Net, Inc.*,
18 No. 00-1210 (D. Az.) (Complaint filed June 26, 2000).

19 21. Several states or state regulatory authorities have also commenced enforcement
20 proceedings against Integretel in the past. Attached hereto as **Kim Attachment J** is
21 listing of cases of which the FTC is aware in which Integretel was a respondent or
22 defendant.

23 22. Pursuing billing aggregators that violate the law is one way that the Commission has
24

sought to curb cramming. In addition to the Enforcement Action against Integretel and its co-defendant aggregators, the FTC, at times working with the U.S. Department of Justice, has brought numerous cases against billing aggregators. *See FTC v. 800 Connect, Inc.*, No. 03-60150 (S.D. Fla.) (Complaint filed Feb. 3, 2003); *United States v. Enhanced Svcs. Billing, Inc. & Billing Concepts, Inc.*, No. 01-1660 (D.D.C.) (Complaint filed Aug. 1, 2001); *FTC v. American Telnet*, Civ. No. 99-1587 (S.D. Fla.) (Complaint filed June 8, 1999); *FTC v. Hold Billing Svcs., Ltd.*, No. SA-98-CA-0629-FB (W.D. Tex.) (Complaint filed July 15, 1998); and *FTC v. International Telemedia Assocs. Inc.* Civ. No. 1:98-1935 (N.D. Ga.) (Complaint filed July 10, 1998).

23. Even though the Enforcement Action against Integretel concerns unauthorized charges that were billed by the Nationwide Defendants and Integretel from mid-2003 onwards, the FTC has obtained evidence demonstrating that since at least 2001 Integretel had billed unauthorized charges for several different predecessor companies controlled by the Nationwide Defendants and their principals. These entities include Switched Access Communications, Inc., VoiceNet, Inc., Directory Services, Inc., and Spoonfull.net.
24. These entities were the subject of a number of different law enforcement investigations. Attached hereto as **Kim Attachment K** is a letter from Integretel president Ken Dawson to the Florida Attorney General's Office responding to a subpoena concerning these companies. The letter was produced to the FTC by Integretel during discovery. The letter indicates that Integretel billed close to \$30 million on behalf of these entities.
25. Attached hereto as **Kim Attachment L** is a letter from Integretel president Ken Dawson to the Wisconsin Attorney General's Office responding to an inquiry regarding VoiceNet,

1 Inc., in which he indicates an awareness that the same persons were behind all of these
2 predecessor companies. The letter was produced to the FTC by Integretel during
3 discovery.
4

5 26. Attached hereto as **Kim Attachment M** is a letter from Integretel president Ken Dawson
6 to the Nevada Attorney General's Office responding to a subpoena demanding records
7 relating to one of the Nationwide Defendants, Access One Communications, Inc. In the
8 letter, Dawson acknowledges the connection between the predecessor companies and
9 Access One. The letter was produced to the FTC by the Nevada Attorney General's
10 Office.
11

12 27. In 2004 a dispute arose between Integretel and Switched Access regarding Switched
13 Access's entitlement to reserves retained by Integretel pursuant to the billing services
14 contract between the two companies. The companies entered into a settlement that
15 resolved the matter, with Integretel agreeing to pay Switched Access \$850,000 to release
16 its claim to the reserves. Attached hereto as **Kim Attachment N** is an e-mail exchange
17 between Dawson and counsel for Switched Access, Melanie Marks, evidencing this
18 settlement. This e-mail and its attachment were recovered by the FTC from the hard
19 drive of one of the Nationwide Defendants' computers. In the e-mail, Dawson stated that
20 Integretel could not pay the settlement in a lump sum without having to borrow money,
21 thus the settlement provided that partial payments would be made over time.
22

23 I declare under penalty of perjury that the foregoing is true and correct.
24

25
26 Executed on October 1, 2007
27 in Washington, DC


LAURA KIM